IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 974 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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H K INDUSTRIES

Versus

AMBAJI OIL INDUSTRIES PROP. PRAKASHBHAI S PATEL

Appearance:

1. Civil Revision Application No. 974 of 2002

MR PK JANI for Petitioner No. 1-2

MR KIRIT I PATEL for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 26/08/2002

ORAL JUDGEMENT

1. Heard Mr. PK Jani learned advocate for the applicant and Mr. Kirit Patel learned advocate for the respondent. Rule. Mr. Kirit Patel the learned advocate for the Respondent waives service of the Rule. At the

request of the parties, matter is takenup for final hearing.

2. The present revision application is filed against the order passed by the ld. Civil Judge (SD), Mehsana dated 9.7.2002 rejecting the application below ex. 21 and allowing the application below ex. 16 by passing composite order and straightway passed a decree for Rs. 16,48,000/ in the suit filed by the present respondent, who is the original plaintiff in the said suit.

3. It is the case of the petitioner that the ori. plaintiff-present respondent has filed Special Summary Suit No. 2 of 2002 in the Court of Civil Judge (SD), Mehsana for the recovery of Rs. 16,48,000/. The respondent has also prayed for the decree of Rs. 16,48000/ along with the interest at the rate of 18%. The respondent-plaintiff has contended in the suit that the plaintiff has given a cheque for an amount of Rs. 16,48,000/ on 27.11.2001 to the petitioner defendant no. 1 firm and the said amount was given by way of advance. The amount was already realised and received by the petitioner-firm.

4. On notice being issued, the petitioner-firm appeared before the trial court through its advocate. Thereafter, an application under Order 37, Rule 3 of CPC has been filed for summons for judgment and the petitioner has filed leave to defend in response to the said summons for judgment. Both these applications below ex. 16 and ex. 21 were heard by the trial court and the trial court has passed the composite order on 9.7.2002, whereby leave to defend application filed by the present petitioner was rejected and summons for judgment filed by the present respondent was granted and the decree was passed in favour of the plaintiff-present respondent.

5. This composite order is challenged before this Court in this Revision Application. The main challenge is with regard to the maintainability of the revision application in view of the amendment made in sec. 115 of CPC. Another challenge was that since First Appeal is provided against final decree having been passed by the trial court, this Court should not entertain this Revision Application. The petitioner should have filed First Appeal instead of filing the present civil revision application.

6. While meeting with this challenge, learned advocate Mr. PK Jani appearing for the petitioner has submitted that since the case was finally decided by the

trial court by passing the decree in favour of the respondents, present civil revision application is maintainable and the amended provision would not take away the jurisdiction of this Court from deciding this revision application.

7 With regard to another challenge, Mr. Jani has relied on a decision of the Delhi High Court in the case of M/s. Skylark Motors (India) and Ors. vs. Lakshmi Commercial Bank Ltd., reported in AIR 1997 Delhi p. 46 wherein it is held that revision against composite order refusing to grant leave to defend and simultaneously passing decree for recovery of amount claimed is maintainable. This judgment of Delhi High Court has referred to and followed its earlier judgment reported in AIR 1977 (Delhi)226 which is followed by this Court in the case of Mohmad Iqbal Mohmad Askinbhai vs. Good Year India Limited reported in 1988(1)GLH (U.J.) 33. The court has taken the view that an order refusing leave has far reaching consequences and would clearly fall within the ambit of the phrase "any case which has been decided", for so far as defendant is concerned, the controversy has really come to an end. This court is in respectful agreement with the Delhi High Court that in a case where leave is refused and a decree is passed immediately, a revision is competent irrespective of the decree that is passed.

8. In view of the aforesaid legal position, Mr. Jani has submitted that the revision is maintainable. Mr. Kirit Patel, thelearned Advocate appearing for the Respondent, however, seriously contended that the Revision is not maintainable against the ipugned oder and hence, it is to be rejected.

9. I have given serious thoughts to the submissions made by the respective parties. I have also considered the facts of the present case and also perused the authorities cited before me. I am of the view that the law laid down by the Delhi High Court in Shri Krishan Bhardwaj V. Manoihar and M/s. Skylark Motors (India) and others vs. Lakshmi Commercial Bank Ltd. (supra) and followed by this Court in Mohmad Iqbal Mohmad Askinbhai vs. Good Year India Limited (supra) still holds the field and amended provisions contained in s. 115(1) read with proviso thereto wouldnot take away the jurisdiction of this court in entertaining revision in such case.

10. Coming to the second submission, it is undisputed fact that the amount was given by the respondent to the present petitioner and the said amount has already been

received. Whether the amount is received by way of loan or towards part consideration of the property which was to be purchased by the plaintiff, is a matter to be decided only at the time of trial. In absence of any evidence, it is not possible to decide as to whether the present petitioner has got any right to forfeit the amount especially when there is no agreement in writing nor any minutes of the meetting was drawn. This question is to be decided only at the time when the parties would lead necessary evidence and after appreciating the said evidence, the trial court would come to the definite conclusion with regard to the rights of the parties and nature of the amount received.

11. I am therefore of the view that the trial court is not justified in refusing the leave to defend and in straight way passing the decree in favour of plaintfif and against the present petitioner.However, at the same time, the present petitioner is not entitled to unconditional leave to defend the suit. In this view of the matter, I am of the view that the present petitioner is entitled to defend the suit only on condition to deposit the amount of Rs. 8,00,000/ and the suit may be disposed of after considering the relevant facts and evidence of the case. The amount which is ordered to be deposited is directed to be considered as a condition and on fulfillment of such condition, the trial court will proceed with the hearing of the suit. Since certain transactions involved are of commercial nature and dispute involved is in a very narrow compass, the trial court is directed to decide the suit as expeditiously as possible, preferably within the period of six months from the date of the deposit of the conditional amount. It is also made clear that during the pendency of the suit, the present petitioner is restrained from selling, transferring or otherwise disposing of the properties or creating any cheque or encumbrances of suchproperties. The amount should be deposited within a period of 8 weeks from today.

12. With the aforesaid directions, the impugned oder is hereby quashed and set aside and the present Civil Revision Application is partly allowed and Rule is made absolute to the above extent, with no order as to costs.

(K.A. PUJ, J.)
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